

U.S. DISTRICT COURT
N.D. OF N.Y.
FILED

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DEC 21 2005

JOEL WEDDINGTON HARRIS,
Petitioner,

LAWRENCE K. BAERMAN, Clerk
UTICA

vs.

9:04-CV-1449

U. S. IMMIGRATION AND NATURALIZATION
SERVICE,

Respondent.

APPEARANCES:

OF COUNSEL:

JOEL WEDDINGTON HARRIS
Petitioner, pro se

HON. GLENN T. SUDDABY
United States Attorney for the
Northern District of New York
Counsel for the Respondent

JAMES W. GRABLE, ESQ.
Special Assistant United States Attorney

DAVID N. HURD
United States District Judge

ORDER

By prior order of Chief District Court Judge Frederick J. Scullin, Jr., the petition filed herein by Joel Weddington Harris challenging an administrative order of removal from the United States, was transferred to the United State Court of Appeals for the Second Circuit in accordance with § 106(c) of the REAL ID Act. Dkt. No. 18.¹

Petitioner has recently submitted for filing in this action a petition for writ of audita querela. Dkt. No. 19.² By this pleading, petitioner seeks an order lifting the

¹ Division B of the "Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005," Pub.L.No. 109-13, 119 Stat. 231 is referred to as the "REAL ID Act."

² "The common-law writ of audita querela is a remedy granted in favor of one against whom execution has issued or is about to issue on a judgment the enforcement of

detainer placed against him by the respondent in order that he can be released on New York state parole.

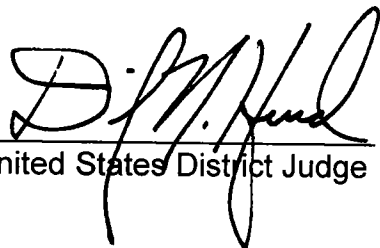
Because the issues raised in this pleading relate to the validity of the detainer against the petitioner and, hence, the legality of the removal order, this Court lacks jurisdiction to consider the petition and the Clerk of the Court is directed to transfer this submission to the Second Circuit. See REAL ID Act § 106(a).

WHEREFORE, it is hereby

ORDERED, that the petition for writ of audita querela filed by petitioner (Dkt. No. 19) is hereby transferred to the Second Circuit Court of Appeals, and it is further

ORDERED, that the Clerk serve a copy of this Order on the parties.

IT IS SO ORDERED.


United States District Judge

Dated: December 20, 2005
Utica, New York.

which would be contrary to justice, either because of matters arising subsequent to its rendition, or because of prior existing defenses that were not available to the judgment debtor in the original action because of the judgment creditor's fraudulent conduct or through circumstances over which the judgment debtor had no control." *Ejelonu v. Immigration and Naturalization Service, Department of Homeland Security*, 355 F.3d 539, 544, 552 (6th Cir. 2004) quoting §7 AM.JUR.2d, *Audita Querela* 1, at 432 (1997) (writ issued prohibiting use of petitioner's youthful trainees status to establish statutory basis for deportation).